

## DEPARTMENT OF BENEFIT PAYMENTS



July 2, 1974

ALL-COUNTY LETTER NO. 74-115

TO: All County Appeals Supervisors

SUBJECT: Fair Hearing Position Statements

REFERENCE: MPP 22-023.32

In an effort to achieve a better base of evidence upon which a fair hearing decision may be based, we have developed a model Fair Hearing County Position Statement. The attachment describes this statement and includes an example of its use.

You will note as well in the attachment that the statement was developed in concert with the County Welfare Directors Association Committee on Fair Hearings and that it has been endorsed by the Board of Directors of the association.

I urge each of you to utilize this tool to assist in your preparation and presentation of fair hearing cases. The quality and uniformity of information it should provide will assist in the production of sound fair hearing results.

Sincerely,

*Robin J. DeZimber*  
ROBIN J. DEZIMBER  
Chief Referee

Attachment

cc: CWDA

**OBSOLETE**Superseded by ACL # 77-15Issued 3-17-77

Suggested County  
Fair Hearing Position  
Statement Format

When the county appeals representative presents the Referee with the county's documentary evidence at or just prior to a fair hearing, this evidence should contain a position statement delineating the pertinent facts, issues, and the county's reasoning supporting its action. This statement is a valuable tool both to the Referee and the county for assuring that all points in issue are effectively dealt with and for avoiding troublesome factual errors in such areas as dates and grant amounts. It also assists the Referee in evaluating the evidence prior to the preparation of his Proposed Decision, resulting in time saved between the hearing and adoption dates.

Attached is a model fair hearing position statement which experience has taught contains most of the elements necessary to the resolution of a controversy. By following this format, the county can avoid leaving out a point vital to the resolution of a problem which the claimant, county representative and the Referee might overlook during the course of the hearing. A brief analysis of each section is given below:

1. HEADING:

This section should contain the claimant's name, present address, State Number, Aid Paid Pending status, and District, where applicable. Also, any aliases should be noted (Example: "AKA Jane E. Smith"). If the case is to be heard concurrently with another, the case name of the companion appeal should be noted.

2. COUNTY ACTION:

This section should recite the county action of which the claimant has complained. It should contain the date of the action or actions, type of aid involved, nature of the action (discontinuance, reduction, overpayment adjustment, denial of application, etc.), amount of proposed reduction, adjustment, etc., and, in the case of overpayments, the proposed adjustment period. If county inaction is in issue (for example, refusal to grant a special need), the date of the request and refusal should be shown.

3. ISSUE:

This section is important in that the Referee will rely on it to some extent to define the purpose and set the direction for the hearing. The issues should be taken from the claimant's request for hearing, but if the request is ambiguous or uninformative, the issues as the county sees them should be stated. Each issue should be listed separately.

4. PERTINENT FACTS AND HISTORY:

This section should contain the following:

- A. The date of application for aid and beginning date of aid, and in the case of AFDC, the basis for deprivation.
- B. FBU composition.
- C. A chronological narrative of pertinent facts and events, giving dates, leading up to the county's proposed action or inaction. Dates and nature of county-claimant contacts prior to the complaint-of event should be detailed in many cases.
- D. Budget computations, if not included as an Exhibit, should be shown. If attached, the results of the computations should be given on the face of the statement. Include grant computations and/or net income computations, as applicable.

5. REGULATIONS:

The specific regulations relied upon by the county should be set forth. They should be quoted in necessary part or paraphrased, not simply listed.

6. CONCLUSIONS:

The above-mentioned regulations should be applied to the facts in the particular case, and the county's reasoning supporting its action or actions should be stated. It is important that all issues raised in the request for hearing be specifically met here.

7. AID PAID PENDING:

The county's position on Aid Paid Pending the hearing should be stated: whether the county feels that the issues presented are a matter of law/policy or fact/judgment, whether the filing was timely, and the reasoning supporting its position, if necessary. In cases where APP is not applicable, this section could be deleted. If the filing was not timely, this section need merely cite this fact, giving dates.

## 8. LIST OF EXHIBITS:

The documentation supporting the county's position will vary from case to case. Budget worksheets, monthly income reports, the county's contact summary, and W-2's are often important when the budget or the claimant's reporting responsibility is in issue.

This suggested format is, of course, flexible. In some cases additional information may be needed, and in others, not nearly as much. However, if this format is used as the framework for all Position Statements, it will lead to greater efficiency and more effective county-Referee communication, minimizing confusion at the hearing and simple factual errors in the Proposed Decision.

Attachment

County of Los Frisco

FAIR HEARING  
STATEMENT OF POSITION

Hearing Date: May 1, 1974

DOE, Jane E.  
1313 Elm St.  
Anywhere, CA 91313

1330-13131313  
Aid (not) Paid Pending Hearing  
District: (where applicable)

COUNTY ACTION:

On March 15, 1974, Los Frisco County notified the claimant in writing that her AFDC grant would be reduced effective April 1, 1974, due to receipt of \$53 net nonexempt earned income in February, 1974.

On the same date and in the same notice, the county notified the claimant that her grant would be reduced an additional \$13 per month in the months of April through July, 1974, to adjust for an overpayment of \$53 which occurred in March due to the claimant's willful failure to report income earned in January, 1974, in a prompt manner.

ISSUE:

1. Whether the county properly computed the claimant's net nonexempt income for the purposes of grant reduction;
2. Whether the claimant willfully failed to report receipt of income in January, 1974, which resulted in an overpayment in March.

PERTINENT FACTS AND HISTORY:

1. The claimant applied for AFDC in Los Frisco County on February 11, 1972, and aid was granted effective March 1, 1972. The basis of deprivation is the absence of the father from the home.
2. The FBU contains the following persons:

NAME	BIRTHDATE	RELATIONSHIP
Jane E. Doe	9-8-46	mother
Mike W. Doe	3-14-66	son

3. On February 19, 1974, the claimant contacted her eligibility worker by telephone and reported that she had begun working as a hospital receptionist on January 1, 1974. Prior to that date, the claimant had been unemployed. The county mailed the claimant blank income report forms (WR-7's) immediately, and on February 25, the claimant

returned the report, pay stub, and child care receipts for January which established a gross income, mandatory deductions, transportation expenses, and child care expenses as shown below. The claimant's telephone report on February 19 was her first contact with the county since November 3, 1973, and at no time prior to February 19 was the county informed of the claimant's employment or income. The claimant's income report for February, submitted on March 3, indicated income and expenses the same as for January.

4. Budget computation for March and April:

	<u>Net Income</u>
Gross Income:	\$350
Mandatory Income Deductions:	- 52
Child Care Expenses:	- 50
Employment Transportation:	- 25
General Family Exemption	
(\$30 + 1/3):	<u>-170</u>
NET NONEXEMPT INCOME	\$ 53
	<u>Grant</u>
Maximum Aid Payment:	\$197
Net Nonexempt Income:	<u>- 53</u>
Amount to Which Eligible:	\$144
Amount Received:	\$197
Overpayment:	\$ 53

REGULATIONS:

MPP Section 44-315.4 provides that the net nonexempt income of the FBU shall be subtracted from the Maximum Aid Payment to determine the FBU's cash grant entitlement. For a two-person FBU the MAP is \$197; for a one-person FBU, it is \$120.

MPP Section 44-315.6 provides in part that for grant computation purposes, income is considered available in the second month following its receipt.

MPP Section 44-111.2 provides that \$30 plus one-third of the remaining gross income is a general income exemption from earned income of an AFDC recipient.

MPP Section 44-113.2 provides that mandatory income deductions, verified child care expenses related to employment, and transportation expenses related to employment are appropriate deductions from gross income when computing a recipient's net nonexempt income for grant computation purposes.

MPP Section 44-103.2 provides that the recipient is responsible for reporting all "...information necessary to income determination."

MPP Sections 40-105 and 44-333.15 state that within his competence, a recipient must make a prompt, accurate, full and complete disclosure of facts material to a correct determination of his grant.

MPP Sections 44-333 and 44-335 provide that where a recipient of AFDC has willfully failed to meet his reporting responsibilities and an overpayment results, the county may liquidate this overpayment by grant adjustment without regard to the income or resources of the recipient, provided the adjustment is completed within one year of the date of discovery and the FBU's total income is not reduced below the needs of the aided children.

#### CONCLUSION:

The county has allowed deductions from claimant's gross income for child care and transportation in the amounts reported by her. No other possible work-related deductions were reported. The county's action in reducing the FBU's cash grant to reflect income received by the claimant is correct and in accordance with regulations.

The county contends that the claimant was aware of her responsibility to report changes in her income promptly, and that her failure to report receipt of income in January resulted in an overpayment in March under the prior month budgeting system. The overpayment is to be adjusted within the one year adjustment period, and the total income resources of the FBU will remain in excess of the needs of the aided child, i.e., \$120. Since the overpayment is willful, it is not required that its adjustment be spread out equally during the allowable adjustment period. The county's action to adjust for the total \$53 in four nearly-equal reductions in the claimant's grant is correct and in accordance with the regulations.

#### AID PAID PENDING:

The claimant filed her request for hearing on March 20, 1974, therefore her request was timely. Inasmuch as the issue here involves a dispute of fact, the county stipulates that aid should be continued pending the fair hearing decision. Overpayment adjustment has been suspended.

#### EXHIBITS:

1. WR-7, January, 1974
2. WR-7, February, 1974
3. Pay Stubs, January and February
4. Contact Summary, November, 1973 through March, 1974.

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Date

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Appeals Worker